



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. The Landlord gave evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by express post and that the Tenant’s signature was obtained for the delivery of the Materials. Although Section 89 of the Act requires service by registered mail given the Landlord’s evidence of the Tenant having signed for the Materials I find that the Materials were sufficiently served as allowed by Section 71(2)(c) of the Act. I also find that the Tenants are deemed to have received the Materials. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to costs claimed for damage to the unit?

Did the Landlord do whatever was reasonable to minimize the claim to rental monies?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 31, 2012. The Landlord submits that on August 28, 2016 the Tenant gave notice to end the tenancy and moved out of the unit on August 30, 2016. At the onset of the tenancy rent of \$1,650.00 was payable on the first day of each month and by 2016 the rent had increased to \$1,789.00. At the outset of the tenancy the Landlord collected \$825.00 as security deposit. No move-in condition inspection was conducted and no report produced. The Parties mutually conducted a move-out condition inspection with completed report. The Tenant provided its forwarding address on the move-out condition report dated August 30, 2016. The Tenant also signed agreement to a deduction of \$48.00 from the security deposit for some cleaning and touch-ups.

The Landlord claims \$48.00 for the costs of cleaning to the unit.

The Landlord states that there is not and never was a waiting list for the unit or any units in the building and that the unit was advertised immediately but not filled until October 1, 2016. The Landlord states that the unit had to be painted and the carpets repaired. The Landlord states that the unit was advertised online for a rental rate of \$1,900.00 and that this amount of rent was obtained. No copy of any advertisement was provided as evidence. The Landlord claims \$1,789.00 as unpaid rent.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. It is undisputed that the Tenant moved out of the unit without giving the Landlord a month's notice to end the tenancy. The Tenant is liable for losses that result from this failure to comply with the Act. However the Landlord is also required to try to minimize the loss being claimed. There is no

evidence that the Tenant caused the unit to be painted or the carpets to be replaced. The Landlord made this choice to conduct this work during September 2016 and there is no evidence of when this work started or finished or that the Landlord did this work as quickly as was reasonably possible. Further the Landlord increased the rent for the next tenancy. This is not evidence of mitigation. As a result I find that the Landlord failed to provide evidence of any reasonable effort to minimize the loss being claimed and I dismiss the claim for unpaid rent.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit and the landlord must complete and sign the report whether the Tenant agrees or signs the report. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As no move-in inspection report was completed I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out.

Section 38(5) of the Act provides that a tenant's signed agreement to any deduction from the security deposit for damage to the unit does not allow a landlord to retain the these monies where the landlord's right to claim against the security deposit was extinguished. Although the Tenant signed its agreement to the Landlord's retention of a portion of the security deposit, given the extinguishment of the Landlord's right, the agreement to retain these monies is of no effect.

As the Landlord had a prima facie claim for unpaid rent that was greater than the security deposit I find that the Landlord could claim against the security deposit for this loss and was not therefore required to return any portion of the security deposit at the end of the tenancy.

Finally I find that based on the Tenant's agreement that the damages existed as noted on the condition report and given the reasonable costs claimed for the cleaning and touchups I find that the Landlord is entitled to **\$48.00** as claimed.

As the Landlord's application had little merit I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$48.00** from the security deposit of **\$825.00** plus zero interest leaves **\$777.00** owed to the Tenant. I order the Landlord to return these monies to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$777.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 17, 2017

Residential Tenancy Branch